

QUAPAW TRIBE OF OKLAHOMA

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March 8, 2018

Ex Parte Filing

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Second Report and Order in the matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (WT 17-79)

Dear Ms. Dortch:

The Quapaw Tribe has received the Second Report and Order in the matter of Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment (WT 17-79).

As stated in previous correspondence, the Quapaw Tribe understands the need for improving deployment of new technologies such as 5G and small cells. Tribal lands continue to lack access to broadband and within the Quapaw Tribe's jurisdictional area there are many areas which continue to have poor coverage. While it is true that the deployment of new technologies is needed, federal law and responsibility must still be upheld. The Quapaw Tribe has concerns regarding how the FCC is upholding their responsibilities in accordance with Executive Order 13175 and the National Historic Preservation Act, (NHPA_ [16 U.S.C. 470 §§ 470-470w-6] 1966.

The Second Report and Order also is proposing to exclude small cell wireless facilities from review in accordance with Section 106. The Second Report and Order states that the Commission is "clarifying that small wireless facility deployment is neither an undertaking nor a major federal action". However, by taking the standpoint that an entire class of federally permitted undertakings will no longer be considered undertakings the Commission is creating a Section 106 Exemption, and this is not being proposed in accordance with existing federal regulations.

36 CFR Part 800 §14(C) describes the establishment of exemptions; the process for which consultation with the ACHP, SHPOs and THPOs shall take place is described in detail. 36 CFR Part 800 §14(C)(3), E(3), and (F) describe consultation with tribes and state that the proponent of the exemption shall ensure that government-to-government consultation occurs and that the proponent of the exemption shall consider the views of SHPOs and THPOs. The Quapaw Tribe does not agree that our views have been considered.

The Report and Order states that "the Commission has consulted extensively with Tribal Nations" and lists meetings and conference calls that have taken place. The Quapaw Tribe does not agree that consultation has occurred. The Quapaw Tribe is noted as having attended many of these meetings. However, our tribal representative requested clarification from the FCC representatives who

were present at the meeting in Broken Arrow, OK and Pala, CA regarding if these meetings were considered "government-to-government consultation" in accordance with the regulations in 36 CFR Part 800 including 36 CFR Part 800 §14(C) (paragraph 22 & 23). The FCC replied that these meetings were *not* considered government-to-government consultation. The Quapaw Tribe further notes that as we have previously stated both verbally and in writing, we have yet to receive a response to our requests for face-to-face government-to-government consultation with the our Tribal Government and the Commission.

It should be noted that the Quapaw Tribe would consider a meeting to be meaningful government-to-government consultation in good faith if certain conditions were met. These include adequate advance notification, an agenda of what is being considered, a proper structure to the meeting which includes adequate time to discuss the relevant issues, and a willingness to consider our views.

The meetings which took place do not meet these qualifications. Some of these meetings took place with little notice. A great example of this is the June 14, 2017 meeting at NCAI which took place in Connecticut. The notice for this meeting was given 13 working days prior (paragraph 18). These meetings did not have detailed and adequate discussion of the information at hand. Additionally, the actual items in the Second Report and Order were not discussed. Although some of the meetings did include discussion of the possibility of establishing a Section 106 exemption for small cells, there was no discussion of potentially changing the definition of an undertaking. At the Pala, CA meeting FCC representatives specifically stated that any such exemption would first have to be reviewed by the Advisory Council, in accordance with 36 CFR 800. There was no discussion of the Commission no longer recognizing the ability of Tribe's to charge a review fee. Meaningful consultation should be face-to-face. Brief conference calls which include large numbers of tribes are not meaningful consultation (paragraph 17). Multiple poorly executed meetings and calls certainly do not equate to meaningful consultation (footnote 39). A federally agency cannot "consult" with an intertribal organization as the Second Report and Order states (paragraph 20, 27, 29). Government-to-government consultation cannot occur between a federal agency and a non-federally recognized tribe, such as the "Haliwa-Saponi Indian Tribe" (paragraph 26). It is particularly concerning if the FCC is consulting with non-federally recognized tribes, and not only raises grave concerns regarding FCC practices, but also clearly illustrates the poor quality of work the FCC has put into these meetings and the Second Report and Order.

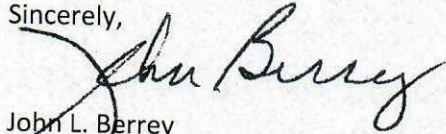
The Second Report and Order proposes that the Commission will no longer recognize tribes to have the right to require a research fee for TCNS projects. The Quapaw Tribe strongly opposes this change. When our office receives a proposed cell tower project, they are being requested to conduct research which only they are qualified to perform. Our office employs uniquely qualified tribal experts who consult written records to determine if there are known historic properties. Additionally, our tribal staff may consult with our tribal leadership and with tribal elders to determine if there is any known potential for a project to impact a site. The amount of research needed per project varies, however the fee we request for this research is nominal and averages the charge necessary to allow our office to fund the staff and research work needed to respond. If any potential issues are found this results in discussion with applicants and potential changes to the project. These changes have prevented adverse effects from occurring on several projects. The Second Report and Order states that many carriers are reporting that adverse effects related to tower construction is rare. This is because the current system is highly effective and has prevented harm to historic properties.

Similarly, the Second Report and Order describes that the Commission will not require Applicants to compensate tribes for services such as monitoring, assessing impacts or mitigating adverse effects; and states that the applicant is not required to engage the services of any particular entity (paragraph 119). The need for services is rare, however when they are needed the tribe not only possesses greater knowledge than any other contractor, they are in fact the only entity which is uniquely qualified to be able to speak for these sites.

The Quapaw Tribe reiterates that we understand the need for improving deployment of new technologies such as 5G and small cells. However, the Second Report and Order impedes tribal sovereignty and hinders our mutual efforts for historic preservation. The Quapaw Tribe urges the Federal Communications Commission not to proceed with this Second Report and Order. The Quapaw Tribe again requests meaningful government-to-government consultation with the FCC. The Quapaw Tribe also requests that the FCC work with industry leaders to facilitate a meeting with tribes, industry and the FCC. I believe that such a meeting would enable discussions which would be more productive than the measures included in the Second Report and Order.

Thank you for the consideration of our comments.

Sincerely,



John L. Berrey
Chairman, Quapaw Tribe

CC: ACHP
NATHPO
Senator Jim Inhofe
Senator Tom Udall
Senator John Hoeven
Secretary of Interior Ryan Zinke